

**REMARKS**

Claims 1-30 are pending in the application.

Claims 1-4, 7, 9-17, 19-30 stand rejected.

Claims 5, 6, 8 and 16-18 stand objected to.

Claim 18 has been amended.

**Formal Matters**

Claim 18 stands objected to because of an informality. Claim 18 has been amended to overcome this rejection.

Claims 5, 6, 8 and 16-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. In view of the remarks set forth herein, Applicant believes the rejected base claims, and therefore claims 5, 6, 8, and 16-18, are allowable as they stand.

**Double Patenting**

Claim 1 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 10/436,354. Since this rejection is a provisional double-patenting rejection, Applicant will wait to address this rejection until one of the identified applications issues.

**Rejection of Claims under 35 U.S.C. §102**

Claims 1-4, 7, 9-15 and 19-30 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Green, et al., U.S. Patent Publication No. 2003/0167380 (Green). Applicant respectfully traverses this rejection.

Green Fails to Teach Replication

Independent claim 1 states that the method claimed therein comprises “replicating said storage volume using said storage object.” Likewise, independent claim 19 states that the apparatus claimed therein comprises “a means for replicating said storage volume using said storage object,” independent claim 24 states that the machine readable medium claimed therein has a plurality of instructions which when executed cause a machine to perform a method comprising “replicating said storage volume using said storage object,” and independent claim 29 states that the data processing system claimed therein comprises “a volume replicator configured to...replicate said storage volume using said storage object.” However, Green fails to teach replication.

In order to show that Green teaches the replication required by independent claims 1, 19, 24, and 29, the Examiner relies exclusively upon elements 520-540 of figure 5. However, these elements relate to a snapshot cache, not to replication. In discussing elements 520-540 paragraphs 0076 and 0077 of Green state:

[0076] Turning now to FIG. 5, a method 500 for performing the first series of operations 300 from FIG. 3 are illustrated. First, the system waits (Step 510) until a command is received from the system, from an administrator of the system, or from a user of the system. If a command to take a snapshot is received (Step 520), then a new snapshot cache is started (Step 530) and the previous snapshot cache, if one exists, is ended (Step 540). The process then returns to Step 510 to wait for another command.

[0077] If the determination in Step 520 is negative, then the system determines (Step 550) whether a command to write new data to the volume has been received. If not, then the system returns to Step 510 to wait for another command. If so, then the system determines (Step 560) whether the data on the volume that is going to be overwritten needs to be cached. For example, from FIG. 3, data "B" and "H" did not need to be cached. On the other hand, data "C," "D," "G," "F," "I," and "A," from FIG. 3, all needed to be cached. If the determination in Step 560 is positive, then the data to be overwritten on the volume is written (Step 570) to snapshot cache. If the determination in Step 560 is negative or after Step 570 has been performed, then the new data is written (Step 580) to the volume. The process then returns to Step 510 to wait for another command.

Therefore steps 520-540 relate to starting a new snapshot cache in response to a command. As is made clear by the many examples of replication found in the specification, starting a new snapshot cache in response to a command is not the same as replication. (See, for example, paragraph 0003 of the specification which states, “Replication is one technique utilized to

minimize data loss and improve the availability of data in which a replicated copy of data is distributed and stored at one or more *remote* sites or nodes.” (Italics added.) As a further example, see FIG. 2 which identifies a primary node 200a coupled to a secondary node 200b.)

Further, Applicant has performed several keyword searches within the text of Green available via the USPTO website and it appears that, to the best of Applicant’s knowledge, there is no discussion of replication. The terms “replication,” “replicating,” “replicated,” and “replicate” do not seem to appear within the document. Given Green’s focus on snapshot creation and maintenance, Applicant wouldn’t expect any mention of or teachings related to replication to appear in Green. Indeed, Green fails to teach or suggest the act of replicating or the systems disclosed in Green being used with replication.

Therefore, for at least this reason, claims 1, 19, 24, and 29, as well as their respective dependant claims 2-18, 20-23, and 30, should not be rejected under 35 U.S.C. § 102 as being anticipated by Green.

CONCLUSION

In view of the amendments and remarks set forth herein, the application is believed to be in condition for allowance and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is invited to telephone the undersigned at 512-439-5087.

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on **October 2, 2006**.

  
Attorney for Applicants

10/2/2006  
Date of Signature

Respectfully submitted,



Brenna A. Brock  
Attorney for Applicants  
Reg. No. 48,509  
Telephone: (512) 439-5087  
Facsimile: (512) 439-5099